BRIEF FOR RESPONDENT

CORRECTIONS AND ADDITIONS TO PETITIONERS' STATEMENT OF FACTS

The petitioners (mortgagees) became the purchasers of respondent's property at the mortgage foreclosure sale, paying therefor the amount due on the mortgage, (averaging $219.68 per lot), while from the testimony of Mr. David T. Lorimer (Mich. Rec. 75-a; this U. S. Rec. 41a) fourteen years manager of the Real Estate Department of Detroit Trust Company, the lots at the time of sale were worth from $550.00 to $600.00 each, and another real estate operator (Mich. Rec. 76-b; this U. S. Rec. 42-a) testified they were worth from $700.00 to $725.00 each.

A deed was given by the sheriff in pursuance of this sale held under the "Power of Sale" clause in the mortgage upon which, under the statute the sheriff "shall endorse upon each deed the time when the same will become operative in case the premises are not redeemed according to law" and under which such deed must "be deposited with the Register of Deeds of the county in which the land therein described is situated * * *." In case such premises shall be redeemed, the Register of Deeds shall AT THE TIME OF DESTROYING SUCH DEED, as provided in Section 12 of this Chapter, WRITE ON THE FACE OF SUCH RECORD THE WORD 'REDEEMED' STATING THE DATE SUCH ENTRY IS MADE, AND SIGN-

ING SUCH ENTRY WITH HIS OFFICIAL SIGNATURE" (Pet. Brief p. 22).

(Pet. Brief, p. 23):

> "(14958) Sec. 10. Unless the premises described in such deed will be redeemed within the time limited for such redemption as hereinafter provided, SUCH DEED SHALL THEREUPON BECOME OPERATIVE and shall vest in the grantee therein named, his heirs, or assigns, all the right, title or interest, which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter, except as to any parcel or parcels which may have been redeemed and cancelled as hereafter provided."

Section 14959 following Section 14958, found on pages 22 and 23 of Petitioner's Brief then proceeds to provide that

> "If the mortgagor, his heirs, executors, administrators or any person lawfully claiming from or under him or them, shall WITHIN ONE YEAR FROM THE TIME OF SUCH SALE REDEEM THE ENTIRE PREMISES SOLD, * * * and in case such payment is made to the Register of Deeds, the sum of $1.00 as a fee for the care and custody of such redemption money, *then such deed shall be void* and of no effect."

The sheriff's deed was recorded on February 7th, 1918, and would have become operative on February 7th, 1919, except that on April 6th, 1917, the United States entered the World War; on March 8th, 1918, United States Congress passed the Soldiers' and Sailors' Civil Relief Act, so-called; on September 24th, 1918, plaintiff entered the military service, from which he was discharged on May 14th, 1919 (Mich. Rec. 121-b, Exhibit 3; this U. S. Rec. 66).

So that, if the mortgage foreclosure sale was valid, when the plaintiff entered the military service the statutory equity of redemption had four months and fourteen days to run before its expiration; and if the sale were valid, and if plaintiff's entrance into military service had not stopped the running of the period for redemption, then when plaintiff was discharged from the military service on May 14, 1919, his right to redemption had expired three months and seven days previous thereto, and the proprty became forfeited to the defendants.

Plaintiff alleges in paragraph 9 of the bill of complaint (Mich. Rec. 5-b, 6-a; this U. S. Rec. 4-b), and supported by his testimony (Mich. Rec. 61-a; this U. S. Rec. 33-b); that at the time the United States entered the World War, he had a $3,000.00 indebtedness, exclusive of the mortgage indebtedness, and had life insurance premium obligations amounting to $2,000.00 annually on policies which had been in existence for 10 to 12 years, on which he had borrowed money previous to entering the military service (Mich. Rec. 61-a; this U. S. Rec. 33-b; Mich. Rec. 66-b; this U. S. Rec. 36-a).

Plaintiff alleges that due to his military service, his health had broken down (Mich. Rec. 9-b, 10-a and 56-b; this U. S. Rec. 6-b, 7-a and 30-31) and when he returned from military service, he was in worse financial position than when he had entered it, and because of conditions in the City of Detroit he was unable to secure an office (Mich. Rec. 61-b; this U. S. Rec. 33-b, 34-a); and that upon his return to Detroit in the latter part of July, 1919, he and Mr. Warren went to see petitioner Ebert with reference to plaintiff's lots and that it was

at this time that plaintiff's right to redeem was recognized and conceded by petitioners and negotiations begun by them to purchase the property from respondent (Mich. Rec. 10-b; 11-a; Keary 45-b; 56-b; 57, 58, 59, 60; 126 Ex. 11; 44-b; 45, 51-b; 52-a; this U. S. Rec. 6-a; 7-b; Keary 24-b; 31-a; 32-33; 6-a, Exhibit 11; 24-a; 25; 28).

In reliance upon these negotiations, in good faith, and when an agreed price at which petitioners would buy the lots was found to be impossible, respondent borrowed $1500.00 from Dr. George N. Renaud and made tender of Exhibit 5, a certified check in the sum of $1735.93, the amount fixed by petitioners as necessary to redeem (Mich. Rec. 58-b; 59; this U. S. Rec. 32-b, 33). Before the refusal of this tender, no questions had ever been raised by either Ebert of Keary as to respondent's right to redeem (Mich. Rec. 68; this U. S. Rec. 37).

This was a legal right apparently believed in and recognized by all of the parties, both petitioners and respondent, and their attorneys and even recognized by the *nisi prius* Judge Webster, after argument and re-argument of the cause and the submission of initial briefs but before the submission of the final briefs. Opinion of Court (Mich. Rec. 114-b; this U. S. Rec. 62-63.)

Judge Webster's opinion is that if this had been the correct construction of the Act, *defendant's negotiations with plaintiff for their purchase from him of the lots in question, constituted an estoppel.* Opinion of Court (Mich. Rec. 113-a; this U. S. Rec. 62), affirmed by the Michigan Supreme Court in its opinion.

The fact that these negotiations for the purchase by the petitioners of respondent, of the lots in question, continued until on or about November 20th, 1919, the

date of the tender of the certified check, Exhibit 5, in the amount of $1735.93, the exact amount named by defendants as acceptable to them to redeem under the mortgage (Mich. Rec. 59-b; this U. S. Rec. 32-b) under the findings of fact of Judge Webster's opinion (Mich. Rec. 113-a; this U. S. Rec. 62), affirmed by the Michigan Supreme Court.

Petitioner Ebert claims to have purchased the lots in question from petitioner Keary on December 18th, 1919. This statement is supported throughout by the testimony of Ebert and Keary, which testimony is unquestionably false and stamps the whole situation with conspiracy of defendants for reasons now stated.

The warranty deed from the Kearys to Ebert (Defendants' Ex. B, this U. S. Rec. 74) purports to have been signed on December 18th, 1919, in the presence of Louis L. Ebert, brother of Edmund L. Ebert, and in the presence of Norman H. Choate, the said Choate being the same party who is associated with Ebert and who purchased the lots in the mortgage foreclosure sale from the Kearys. This is the same Norman H. Choate who as the notary public purported to have taken the acknowledgment of the deed on December 18th, 1919, and states: "My commission expires March 29th, 1924."

The records of the Michigan Secretary of State's office, of which this Court takes judicial notice, show that on December, 1918, Choate's notary commission would have expired on April 12th, 1920, upon his commission dated April 13th, 1916. He was again commissioned as a notary public on March 30th, 1920, expiring March 29th, 1924. This deed was recorded April 26th, 1920. Evidently this deed was dated back because notice of plaintiff's rights in this property was recorded in the

office of the Wayne County Register of Deeds in December, 1918 (Mich. Rec. 124, 125, Exhibits 7 and 8; 65-b; this U. S. Rec. 67, 68, Exhibits 7 and 8; 36). The deed was executed certainly subsequent to March 30th, 1920, the date when the governor of the State under the law commissioned Choate as notary public with the commission expiring March 29th, 1924 (as certified to in the deed) and certainly Choate did not know four months previous to the execution of the deed that thereafter he was to be commissioned a notary public so as to put the expiration of that commission on the deed. Respondent's position is as follows:

1. In the words of petitioners' brief (p. 4):

> "The opinion of the Michigan Supreme Court rests upon the theory that the right or privilege given by the Michigan statute to redeem from such a mortgage foreclosure sale within one year of the sale, is a civil right or limitation (within the meaning of Sections 1-205, and 603 of the Soldiers' and Sailors' Civil Relief Law) and that, while not expressly referred to in the 'Soldiers' and Sailors' Civil Relief Act,' this civil right or limitation is within the spirit, if not within the letter of that statute, and that the period of military service under Section 205 of the Federal Act must be added to the period of redemption fixed by Michigan statute law."

2. The following propositions were raised in respondent's brief before the Michigan Supreme Court but no decision made thereon by the Michigan Supreme Court and we respectfully submit to this Court that this Court should either affirm the Michigan Supreme Court because of the correctness of its decision for the reason given by it, or else affirm the decision by reason of the accuracy of respondent's claim of rights raised before the Michigan

Supreme Court and not passed upon by it and now presented to this court for determination with the other issue, namely:

(a) Because of the equitable jurisdiction conferred by the Relief Act within the statement of facts, where

> "By reason of such service the ability of such person to pay or perform was thereby materially impaired,"
>
> or
>
> "Unless in the opinion of the court the ability of the respondent to comply with the terms of the obligation is not materially affected by reason of his military service."

As the Relief Act puts it:

> "In order to prevent prejudice or injury to their civil rights during their term of service and to enable them to devote their energy to the military needs of the nation."

(b) Because the Michigan Supreme Court was authorized to make the decree that it did, (Chancery matters in Michigan being heard *de novo* on appeal) and this court should come to the same conclusion, *under the general equitable jurisdiction of the Michigan Supreme Court as a matter of law*, (independent of and in addition to the equitable jurisdiction of the Michigan Supreme Court under the Soldiers' and Sailors' Relief Act), by virtue of the testimony in the record showing plaintiff's equities and defendants' iniquities.

Millard v. Truax, 50 Mich. 343.
McIntyre v. Wyckoff, 119 Mich. 537.
Brown v. Burney, 129 Mich. 204.
Williams v. Bolt, 170 Mich. 517.
Dalton v. Weber, 203 Mich. 453.

Hunt v. Rousmanier's, 8 Wheat 174, (U. S. Supreme Court), 5 L. Ed., 589, 600.
Schroeder v. Young, 161 U. S. 334.

(c) *If this court is unwilling to pass upon this case upon the equities and the equitable jurisdiction conferred by the Relief Act and upon the equitable jurisdiction under these same facts inherent in the Michigan Supreme Court independent of the Relief Act by virtue of the foregoing cited dicisions, and if this court cannot agree with the Michigan Supreme Court's opinion construing the Relief Act, on this certiorari this court should refer the matter back to the Michigan Supreme Court for a determination of these two issues which the Michigan Supreme Court failed to pass upon.*

That these questions were raised before the Michigan Supreme Court is clearly apparent from page 10 of our brief before that court which is as follows:

"The following propositions of law are contended for by plaintiff:

I

There was no proof of a legal mortgage foreclosure by the defendants.

II

If the mortgage foreclosure sale was legal, the rights of plaintiff as of the date of his entry into military service on September 24th, 1918, were preserved to him by the provisions of the Soldiers' and Sailors' Civil Relief Act, so-called.

(a) Because of the provisions of Section 205 staying the running of the period for redemption.

(b) Because of Section 202 in that divesting plaintiff of his legal title by permitting the expiration of the redemption period while he was in military service would be 'a penalty incurred while plaintiff was in the military service and his ability to pay was thereby materially impaired.'

(c) Because of Section 301 preventing defendants from terminating the contract or resuming possession of the property for non-payment, 'during the period of such military service except by action in a court of competent jurisdiction.'

(d) Because of the provisions of Section 302, (2) read together with Section 301 (1), which by reason of defendants' failure to comply therewith, prevented a court from exercising the equitable jurisdiction conferred by Section 302 (2) (a) (b).

(e) Because Section 100 and 603 of the Soldiers' and Sailors' Civil Relief Act, read together with the provisions hereinbefore referred to, make it conclusively appear that the 'transaction' in question in this case, under a proper construction of the Act, comes within the protection of the Soldiers and Sailors Civil Relief Act.

III

(a) Because this Michigan Court of Equity, under the established facts in this case, and under the Michigan decisions applying thereto, as well as under the special equitable jurisdiction conferred by the Soldiers and Sailors Civil Relief Act, has the power and should exercise it to give relief.

(b) Because the conduct of the defendants in negotiating for purchase by them from plaintiff of the property in question, constitutes a recognition of the mortgage as a continuing mortgage; a waiver of the foreclosure and an estoppel to set up the foreclosure."

ARGUMENT

I.

As to subdivision No. 1, we are satisfied with the opinion of the Michigan Supreme Court hereby expressly made a part of this brief, which amply covers the subject.

II.

Bearing in mind that while ordinarily the rule would be that a statute in derogation of the common law, contract provisions, or other statutes must be strictly construed unless it plainly expresses itself to the contrary so that it does not conflict with existing statutes, common law, contract provisions, etc., opposed to this ordinary rule, *of construction is the rule that a Federal law, like the one that is involved in this case, which is a remedial one, intended to protect the special wards of the Government and afford them every privilege, right, benefit, immunity and relief possible, must be LIBERALLY construed so as to effectuate its before-mentioned remedial purposes.*

Kuehn v. Neugebauer, 216 S. W. 261 (Texas).
Halle v. Cavanaugh, 111 Atl., 78 (N. H.)
People v. Michigan Central Railroad, 145 Mich. 164, 165 and 166.
Hatch v. Calhoun Circuit Judge, 127 Mich. 174.
Endlich, Interpretation of Statutes.
Lewis Sutherland, Statutory Construction (2nd Ed.).

II (a)

The statement of facts amply covers the equities of the case without necessity for amplification here.

II (b)

We are not interested in the decisions of other courts quoted in petitioners' brief with reference to mortgage foreclosure sales, because this case is governed by the peculiar and particular form of statute in Michigan with reference to mortgage sales and the declarations with reference to the laws applicable thereto under our Michigan statutes by our Michigan Supreme Court, as hereafter quoted.

With reference to the language of Section 302, as to obligations originating prior to the Act and secured by mortgage, etc., "or other security in the nature of a mortgage upon real or personal property *owned* by a person in military service at the commencement of military service *and still so owned by him,*" it must be borne in mind that our Michigan statute provides that neither the sale nor deed become *operative* until one year after the sale (and upon redemption the undelivered deed left with register is void) and then only unless the mortgagee fails to redeem; and until that time the mortgagor has and is entitled to the legal title to the property including occupancy, rents and profits, etc. We here quote appropriate language from

Whiting v. Butler, 29 Mich. 128,

the opinion of the court being by Justice Cooley:

"But is it true that Theodore J. Campau, at the time sale was made on the second execution, had in the premises a mere right to redeem? Most certainly he had something which was very much beyond and above any such mere right. He had the legal title. As owner he might sell and convey the land and deliver possession, might mortgage and lease, might receive the rents and profits, might defend his possession by legal proceedings, or even by force, and if an intruder had obtained possession, might have ejected him by all the same remedies which would have been admissible had his title been subject to no contingency or condition."

Page 129:

"* * * Moreover, if we examine our statutes we shall find that a mere right to redeem has never been subject of an execution sale in this state. It is true that interests which were liable to be defeated by a failure to redeem have been salable, but in every instance these have been legal titles. *What we call the equity of redemption in mortgaged lands is subject to levy and sale, but this is for the very reason that we recognize the owner of that equity as legal owner of the land, and the term 'equity of redemption' as applied to his interest, is well understood to be now, whatever it may have been formerly, a misnomer. Had he a mere equity or right to redeem, it would not be the mortgagor, but the mortgagee, who would be considered owner of the land,* and as owner it would be the interest of the mortgagee which could be sold on execution. This, however, has never been allowed in this state. And though other parties have had rights to redeem, distinct from any ownership of a legal title—such as second or other subsequent

> mortgagees, judgment creditors with levies, mechanics with liens, etc.—*it would require an express statute to subject these rights to attachment and sale on legal process, and a very great change in our practice and notions on such subjects before such a statute would be likely to be adopted.*"

In other words, it clearly appears that the mortgagor's title to his property has in no whit changed by the mortgage foreclosure sale, except that a time is fixed when it will change.

It is idle to urge upon the Court that neither Section 202 nor Section 205 apply, in words or terms, exactly to the situation at bar. Such argument is for a strict construction of this remedial act. It is more appropriate to urge upon the Court the purpose of the act as set forth in Section 100:

> "to extend protection to persons in military service * * * to prevent prejudice or injury to their civil rights during their term of service and to enable them to devote their entire energy to the military needs of the nation, and to this end the following provisions are made for the temporary SUSPENSION OF * * * TRANSACTIONS which may prejudice the civil rights of persons in such service during the continuance of the present war."

Is it not perfectly clear upon this record that if Dr. Poston had not been given legal advice by Judge Bartlett that his transaction with the defendants was protected by the Act, his mind would have been so perturbed by worry as to possible forfeiture of his property, endeavors to raise the money to redeem, efforts to secure furloughs so as to return to Detroit and make

financial arrangements, etc., that it would have been absolutely impossible for him "to devote his entire energy to the military needs of the nation" with his mind thus engrossed and occupied?

That the parties still considered this mortgage in effect and in existence and not canceled or ended by the sale under the present claim of petitioners that the year for redemption expired on February 7th, 1919, is evident from Exhibit 11, dated July 24th, 1919, signed by the petitioner Keary and reading as follows:

> "Dear Sir:
>
> Below please find figures showing *amount due on lots* 32, 35, 37, 39, 41, 43, 45 and 47, Sunnyside Subdivision, *Mortgaged Sept. 25-16, by Eddie E. Hulett and wife.*
>
> Interest is computed to Aug. 5, 1919, BUT DEDUCTION CAN BE MADE SHOULD PAYMENT BE MADE BEFORE THAT DATE.
>
> Yours truly,
> (Signed) A. J. Keary.
>
> *Due Aug. 5, 1919*.....$1,945.39"

The findings of the *nisi prius* Judge, affirmed by the Michigan Supreme Court, are that this estopped petitioners to refuse the subsequent tender while the negotiations for settlement were still in progress except for the holding this offer was not binding as being without consideration, the time for redemption having previously expired, which finding was reversed by the Michigan Supreme Court opinion.

In *Williams v. Bolt, 170 Mich. 517,* the claim was made that the defendant, having received a deed subsequent to the expiration of the redemption period, he was the owner of the property. The Supreme Court

disposed of this claim by saying that that contention was inconsistent with the defendant subsequent to having received this deed and on June 17th, 1905, having sent plaintiff the following statement:

> "Statement. Muskegon, Michigan, June 17th, 1905. Mr. O. T. Bolt to John Williams, Dr. (That is the way it reads.) Principal $1,162.50; interest, $208.32; taxes, $417.35; Lovelace, $211.83."

The Supreme Court after referring to defendant's claim that the original $1400.00 was never repaid to him and that the first deed was security for it, says:

> "He does claim, however, that at the time of obtaining the Woolner deed, the redemption period having expired, the title of complainant and the claim of said defendant had both become extinguished by the sheriff's deed to the Woolners after the expiration of the redemption period, and that from the time he obtained the deed from the Woolners he became the owner of this property * * *."
>
> "It is the claim of complainant that, applying the rule 'once a mortgage, always a mortgage,' the defendant could not in the manner indicated acquire the title as against him." * * *
>
> "We think that it can be said that at the time of making this statement defendant Bolt recognized the relation of mortgagor and mortgagee."

In:

Brown v. Burney, 128 Mich. 204,

a bill was filed AFTER THE EXPIRATION OF THE TIME FOR REDEMPTION to set aside a statutory mortgage foreclosure on the ground that it was defective. It was not a bill to redeem, it contained no

specific prayer for that relief, and made no offer to pay the mortgage debt. The Supreme Court considered it a bill to redeem, and decreed redemption, under the circumstances, *although they found the foreclosure valid and undefective.*

The Supreme Court held the mortgage foreclosure good and reversed the Circuit Court holding that the mortgage foreclosure was not defective but gave relief, nevertheless, *from a pure mistake of law on the part only of the party seeking relief after expiration of redemption period.*

The case of *Benson v. Bunting, (59 Pac., 991 Calif.)*, was another case where redemption was allowed *after the expiration of the statutory period because of a pure mistake of law.*

In support of this decree, the Supreme Court of California quotes from the opinion of Chief Justice Marshall of the United States Supreme Court in the case of

Hunt v. Rousmanier's, 8 Wheat 174, 215, 5 L. Ed. 589, 600:

> "Although we do not find the naked principle that relief may be granted on account of ignorance of law asserted in the books, we find no case in which it has been decided that a plain and acknowledged mistake in law is beyond the reach of equity."

See also *Schroeder v. Young, 161 U. S., 334.*

Mr. Justice Brown, for the United States Supreme Court:

> "There is a concurrent jurisdiction of a court of equity, founded upon the general right to re-

lieve from the consequences of fraud, ACCIDENT OR MISTAKE, NOTWITHSTANDING THE STATUTORY PERIOD FOR REDEMPTION HAS EXPIRED."

Also see *Millard v. Truax, 50 Mich., 343; McIntyre v. Wyckoff, 119 Mich., 557; Dalton v. Weber, 203 Mich., 453.*

In *Millard v. Truax, supra,* Mr. Justice Cooley, for the court, held that though the defendant had absolute title by reason of the first mortgage foreclosure (defendant being the purchaser at first mortgage sale) on his foreclosing the second mortgage which he also held, and then accepting a tender of redemption money on the second mortgage foreclosure although claiming absolute title to the land, the MORTGAGOR'S ASSIGNEE WAS ALLOWED TO MAINTAIN A BILL TO REDEEM FROM THE FIRST FORECLOSURE, ALTHOUGH THE REDEMPTION HAD EXPIRED, on the ground that by accepting the redemption money on the second mortgage foreclosure, the *defendant was estopped from* SETTING UP HIS ABSOLUTE TITLE as being inconsistent with acceptance of redemption money.

In *McIntyre v. Wyckoff*, supra, the second mortgage foreclosure by advertisement HAD BECOME ABSOLUTE before the filing of the bill. ON GENERAL EQUITABLE PRINCIPLES, *although holding the sale valid, and although the statutory period for redemption had expired before the bill was filed*, the court nevertheless allowed 20 days within which to redeem, and after affirmance of the decree by the Supreme Court on complainant's appeal, the Supreme

Court allowed 20 days from its decree within which to redeem.

In *Dalton v. Weber, supra,* after the second mortgage foreclosure had become absolute, the mortgagors, on the General Equitable jurisdiction of the court, NOTWITHSTANDING THE EXPIRATION OF THE STATUTORY PERIOD FOR REDEMPTION, were allowed to file a bill and permitted to redeem, on the mere showing that the mortgage was usurious.

We take it this follows the statement of the rule by Justice Montgomery in

People v. M. C. R. R., 145 Mich., 145,

"Courts of equity are not within the words of the statute of limitations," citing

1 Story on Equity Jurisprudence, Sec. 529.
Jenny v. Perkins, 17 Mich., 28.
Smith v. Blindbury, 66 Mich., 325.
Allen v. Conklin, 112 Mich., 74, 77, 78.

From the last cited case the following from

Tompkins v. Hollister, 60 Mich., 470, is cited,

"*Courts of equity not only act in obedience and in analogy to the statutes of limitations in proper cases, but they also interfere, in many cases, to prevent the bar of the statutes where it would be inequitable or unjust. A fortiori, they will not allow such a bar to prevail, by mere analogy, to suits in equity, where it would be in furtherance of a manifest injustice.*"

2 Story, Eq. Jur. Sec. 1521, 13 Am. & Eng. Enc. of Law, 680.

Thus we find the Michigan Supreme Court refusing to accept as absolute, arbitrary, unyielding, and binding the statute of limitations by which the Michigan legislature has sought to fix, absolutely, one year from mortgage foreclosure sale as the end of the period of redemption as being an infringement upon the equitable jurisdiction and powers of the court, and of the legislative upon the judicial branch of the government.

Respondent entered the army September 24th, 1918. The statutory equity of redemption would have expired February 7th, 1919, four months and fourteen days later. Add this four months and fourteen days to May 14th, 1919, the date of respondent's discharge from military service, brings the date of expiration of the statutory equity of redemption to September 28th, 1919. Does this account for respondent Keary's Exhibit 11, dated July 24th? Does this account for respondent Ebert's prolonging the negotiations for purchase by the petitioners of the property from respondent from July to November 20th (as found by the Circuit Judge) (Opinion of the Court, Mich. Rec. 113-a; this U. S. Rec. 62) so as to bar this equity by lapse of time, as he believed that it existed? We have a right to infer that when on November 19th, 1919, petitioner Ebert fixed the amount which he would accept from respondent to redeem (Mich. Rec. 58; this U. S. Rec. 31-a, 32-b), he did it believing that the doctor did not have the funds and could not raise the funds with which to redeem. Then when he found that the doctor did have the money and tendered the check (Mich. Rec. 59; this U. S. Rec. 32), Exhibit 5, he dilly-dallied along and made other excuses for not accepting the tender (Mich. Rec. 59-b; this U. S. Rec. 32).

Ebert testifies (Mich. Rec. 93; this U. S. Rec. 51) that he bought the lots from *Keary the day the deed was dated, December 18th, 1919, and that he paid $2600.00 cash therefor (Exhibit G. R. 146). The notary public certifies in the acknowledgment of the deed (Exhibit G) that it was acknowledged before him on December 18th, 1919, and then certifies that his notary commission expires March 29th, 1924. The records of the Secretary of State's office show that he was not commissioned as a notary public, with a commission expiring March 29th, 1924, until March 30th, 1920, so that it is clearly evident that the deed in question could not have been executed by the parties until some time subsequent to March 30th, 1920, as it is clear that on December 18th, 1919, a notary public could not know that three and one-half months later, on March 30th, 1920,* he was going to become a notary. There is no mistake here.

The congressional proceedings reporting the debates in Congress on the Relief Act preliminary to its passage, indicate very clearly that the proponents of the bill anticipated that they could not and did not foresee and provide for every possible instance in which they desired protection to be afforded under the Relief Act. (Soldiers' and Sailors' Civil Rights Bill; hearings before the Subcommittee of the Committee on the Judiciary United States Senate 65th Congress First Session on S. 2859, part 1, printed for the use of the Committee on Judiciary; September 22, 1917; (Sec. Baker, p. 1, 7 (where *Stewart v. Kahn, 11 Wall 493* relied on in Michigan Supreme Court opinion is referred to) 9, 10; Wigmore, 14, 15, 16, 17, 21, 26; Soldiers' and Sailors' Civil Rights Bill, hearings before the Subcommittee of the Committee on the Judiciary United States Senate

65th Congress First Session on S. 2859, Part 2, September 25th, 1917; Soldiers' and Sailors' Civil Rights Bill Memorandum before the Subcommittee of the Committee on the Judiciary United States Senate 65th Congress First Session on S. 2859, September 14th, 1917, (Wigmore, 26 and 27, 28, 30, 31, 34, 39, 41, 42, 54, 71, 72.) It was because of this fact that they provided a broad general equitable jurisdiction so that where an equitable case could not be brought within the provisions of the wording of the specific rules, protection could, none the less, be given by reason of the power of the court in appropriate circumstances within its discretion under the broad general equitable provisions specially inserted in the act for the purpose.

In this case we are prepared to say as to mortgages in the language in petitioners' brief on page 9 quoting the court's language in *Ethridge v. Sperry, 139 U. S. 266, 277.*

> "They are instruments for the transfer of property, and the rules concerning the transfer of property are primarily, at least, *a matter of state regulation.* We are aware that there is great diversity in the rulings on this question by the courts of the several states; *but whatever may be our individual views as to what the law ought to be in respect thereto,* there is so much of a local nature entering into chattel mortgages that *this court will accept the settled law of each state as decisive in respect to any sale arising therein.*" And see *Whiting v. Butler (Mich.), supra.*

Respectfully submitted,

LOUIS COHANE,

Attorney for Respondent.

Dated at Detroit, Mich., December 2, 1924.